

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON DC 20554

IN THE MATTER OF:)	
)	
JAMES CHELMOWSKI)	
Complainant)	FILE NO. EB-14-MD-016
)	Docket No. 14-260
v.)	
)	
AT&T MOBILITY LLC)	
Defendant)	
)	
For FCC Violations)	
47 CFR 1.717)	
47 CFR 42.35)	
47 CFR 42.36 &)	
Fraudulent Concealment Scheme)	
)	

Motion to Compel FCC Rules
Including but Not Limited to 47 CFR § 1.724 Answers and
47 CFR § 1.17 - Truthful and Accurate Statements to the Commission

Date: March 3, 2015

James Chelmowski v. AT&T Mobility LLC

Motion to Compel FCC Rules Including but Not Limited to 47 CFR § 1.724 Answers and 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission

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Motion to Compel FCC Rules
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47 CFR § 1.17 - Truthful and Accurate Statements to the Commission

1. NOW COMES the Complainant JAMES CHELMOWSKI ("Chelmowski") and in his Motion to Compel FCC Rules including but not limited to 47 C.F.R. § 1.724 Answers and 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission and states the following:

2. AT&T Mobility LLC (AT&T) continuing attempts to conceal the facts of AT&T FCC violations and fraudulent concealment in this Formal Complaint process includes willfully violating 47 CFR § 1.17 of the Communications Act of 1934. Ms. Marlene H. Dortch, FCC Secretary on July 18, 2007 ORDER File No. EB-06-IH-2112 Docket FCC 07-125¹ stated in regards to 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission stated:

35. The Commission and the courts have recognized that “[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.”² “Misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission.”³ Misrepresentation is “a false statement of fact made with intent to deceive.”⁴ Lack of candor is concealment, evasion, **or** other failure to be fully informative, accompanied by intent to deceive.⁵ Intent to deceive is established if a licensee knowingly makes a false statement,⁶ and can also be inferred when the surrounding circumstances clearly show the existence of an intent to deceive.⁷ The Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency.⁸

3. AT&T conduct before the FCC should require the FCC to seek all the facts in this case by the rules of this FCC formal complaint process and required AT&T to adhere to all rules required by the FCC including producing all requirements in this formal complaint process including but limited to 47 CFR §1.724 (f) & (g). AT&T should not be allowed to continue this contemptuous behavior providing concealment of the material facts, false and misleading

¹ Exhibit G - Ms. Marlene H. Dortch, FCC Secretary on July 18, 2007 ORDER File No. EB-06-IH-2112 Docket FCC 07-125 Complete Order

² See *Contemporary Media, Inc., v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) (*Contemporary Media*)),

³ Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order, and Policy Statement, 102 FCC 2d 1179, 1210-11 760(1986)).

⁴ *Fox River Broadcasting, Inc., Order*, 93 F.C.C. 2d 127, 129 (1983) (*Fox River Order*). A false certification may also constitute a misrepresentation. *San Francisco Unified School District, Hearing Designation Order and Notice of Apparent Liability for Forfeiture*, 19 FCC Rcd 13326, 13334 ¶ 19 nn.40- 41 (2004)(subsequent history omitted).

⁵ An applicant has a duty to be candid with all facts and information before the Commission, regardless of whether that information was elicited. See *Fox River Order*, 93 F.C.C. 2d at 129 ¶ 6.

⁶ *Leflore Broadcasting, Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980)

⁷ *American International Development, Inc., Memorandum Opinion and Order*, 86 FCC 2d 808, 816 0.39 (1981), *aff'd sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983).

⁸ *Contemporary Media*, 214 F.3d at 196.

information to the FCC⁹. For the “Federal Communications Commission”, which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter 47 U.S.C. § 151.

Related Background

4. The evidence of these 47 CFR § 1.17 violations are evident in AT&T three written response requiring statement of facts for NOIC FCC complaints.
5. AT&T informal complaint FCC 11-C00292341¹⁰ NOIC response 4/1/11 - inability to port 847-768-0400. AT&T rejected complete and accurate porting request 5 times¹¹ before this letter to the FCC and AT&T continue to reject a complete and accurate porting request after this letter. AT&T Manager of FCC Appeal Bureau, Margaret Trammell mislead the FCC by misleading, deception and complete concealment¹² of the only material facts the AT&T 2010 March and April porting requests and rejections.¹³
6. AT&T informal complaint FCC 11-C00325771¹⁴ NOIC response 9/22/11. AT&T apparently because of 47 CFR § 1.17 refused to provide an author to this letter dated 9/22/11. AT&T anonymous letter¹⁵ mislead the FCC by deception and concealment again by complete concealment of the only material facts the 2011 March and April porting requests and rejections.¹⁶

⁹ 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).

¹⁰ Exhibit B-0008

¹¹ Exhibit B-0003

¹² 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).

¹³ Exhibit B-0004

¹⁴ Exhibit B-0012

¹⁵ 47 CFR § 1.724 (f) (2) (ii) requires identification of all authors ; Exhibit B-0012

¹⁶ Exhibit B-0003

7. AT&T 1/16/15 FCC Answer to the (12) porting violations, (2) informal complaint violations and fraudulent concealment. AT&T refused to provide required factual support only unacceptable general denials.¹⁷ Mislead the FCC on this concealment of required factual evidence by false unrelated personal attacks and character assassination. AT&T could not even provide a single porting document or required proof of delivery¹⁸ of the FCC informal complaints to Mr. Chelmowski. Instead created a scheme to mislead and deceive the FCC on the issues by providing un-related false character assignments and defamation against Mr. Chelmowski.¹⁹ Why did AT&T conceal these required AT&T documents because they would contradict all AT&T statements confirmed by Neustar²⁰, XO²¹ and OOMA²² sworn subpoena? Outlined in Mr. Chelmowski 1/26/15 reply providing evidence through third party subpoena documents and AT&T documentation that virtually every statement in AT&T Answer was false.

47 CFR §1.17 - Truthful and Accurate Statements to the Commission FCC's

Quintessential Regulatory Demand²³ from FCC's Licensee (like AT&T)

8. FCC Marlene H. Dortch, Secretary on July 18, 2007 ORDER File No. EB-06-IH-2112 Docket FCC 07-125²⁴ stated:

¹⁷ Mr. Chelmowski January 26, 2015 reply - ¶¶ 56 to 86

¹⁸ Exhibit G-0026 to 29 - FCC Order DA 11-775 : Released: April 29, 2011 by Nancy Stevenson, Deputy Chief, FCC Consumer Policy Division stated in ¶ 4 failure to provide "proof of delivery is presumed to be a clear and convincing evidence of a violation (47 CFR 1.717)

¹⁹ Mr. Chelmowski January 26, 2015 Affidavit #1

²⁰ Neustar Subpoena response - Exhibit B-0001; January 26, 2015 Reply Exhibits Ex-0182 to 187

²¹ XO Subpoena response - January 26, 2015 Reply Exhibits Ex-0188 to 213

²² OOMA Subpoena response January 26, 2015 Reply Exhibits Ex-0214 to 236

²³ California Broadcasting Corporation, 2 FCC Rcd 4175,4177 (Rev. Bd. 1987) (*italics in original*)

²⁴ Exhibit G - Ms. Marlene H. Dortch, FCC Secretary on July 18, 2007 ORDER File No. EB-06-IH-2112 Docket FCC 07-125 Complete Order

B. Misrepresentation and Lack of Candor

34. Section 1.17 of the Commission's Rules prohibits misrepresentations and lack of candor in Commission filings.²⁵ "The bedrock requirement for absolute truth and candor from a Commission licensee or from a licensee or applicant is, simply stated, this agency's *quintessential* regulatory demand."²⁶ Material misrepresentations to the Commission or an intentional lack of candor with respect to matters affecting an applicant's basic eligibility status are two species of misconduct that thoroughly disqualify applicants for the public trust embodied in a Commission license.²⁷ Where an applicant has knowingly attempted to mislead the Commission on an underlying matter of decisional import, complete disqualification of such an untrustworthy licensee or applicant has consistently resulted.²⁸ As the Court of Appeals for the D.C. Circuit stated:

[A]pplicants before the FCC are held to a high standard of candor and forthrightness. The Commission must license [thousands of] stations in the public interest, and therefore relies heavily on the completeness and accuracy of the submissions made to it. . . Thus, "applicants . . . have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate."²⁹

35. The Commission and the courts have recognized that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing."³⁰ "Misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission."³¹ Misrepresentation is "a false statement of fact made with intent to deceive."³² Lack of candor is concealment, evasion, **or** other failure to be fully informative, accompanied by intent to deceive.³³ Intent to deceive is established if a licensee knowingly makes a false statement,³⁴ and can also be inferred when the surrounding circumstances clearly show the existence of an intent to

²⁵ See 47 C.F.R. 1.17 - Truthful and Accurate Statements to the Commission.

²⁶ California Broadcasting Corporation, 2 FCC Rcd 4175,4177 (Rev. Bd. 1987) (*italics in original*)

²⁷ See, e.g., RKO General, Inc. v. FCC, 670 F.2d 215 (D.C. Cir. 1981); WHW Enterprises, Inc. v. FCC, 753 F.2d 1132 (D.C. Cir. 1985); Sea Island Broadcasting Corp. of S.C. v. FCC, 627 F.2d 240 (D.C. Cir. 1980); FCC v. WOKO, 329 U.S. 223 (1946).

²⁸ See, e.g., Contemporary Media, Inc., 13 FCC Rcd 14,437 (1998); Catocin Broadcasting Corp. of New York, 2 FCC Rcd 2126,2136-38 (Rev. Bd. 1987); TeleSTAR, Inc., 2 FCC Rcd 5 (Rev. Bd. 1987); Mid-Ohio Communications, Inc., 104 FCC 2d 572 (Rev. Bd. 1986); Bellingham Television Associates, Ltd., 103 FCC 2d 222 (Rev. Bd. 1986).

²⁹ See WHW Enterprises, 753 F.2d at 1139 (internal citations omitted).

³⁰ See Contemporary Media, Inc., v. FCC, 214 F.3d 187, 193 (D.C. Cir. 2000) (Contemporary Media)),

³¹ Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order, and Policy Statement, 102 FCC 2d 1179, 1210-11 760(1986)).

³² Fox River Broadcasting, Inc., Order, 93 F.C.C. 2d 127, 129 (1983) (Fox River Order). A false certification may also constitute a misrepresentation. San Francisco Unified School District, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334 ¶ 19 nn.40- 41 (2004)(subsequent history omitted).

³³ An applicant has a duty to be candid with all facts and information before the Commission, regardless of whether that information was elicited. See Fox River Order, 93 F.C.C. 2d at 129 ¶ 6.

³⁴ Leflore Broadcasting, Co., Inc. Y. FCC, 636 F.2d 454,462 (D.C. Cir. 1980)

deceive.³⁵ The Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency.³⁶

9. AT&T provided no required factual support³⁷ for their defense for the (6 counts) 42.35, (6 counts) 42.36 and (2 counts) 1.717. AT&T answer omitted the details including dates of the at least six 2011 AT&T porting rejections in March and April of 2011.³⁸ Concealed details of these 2011 porting rejections are in AT&T possession including but not limited to communications with NPAC³⁹, internal documents and external documents, etc. AT&T in its possession has proof of delivery or not delivered⁴⁰ the required copies of 2011 NOIC to Mr. Chelmowski⁴¹, the author of the 9/22/11 NOIC letter⁴², case files of the 2011 FCC informal complaint investigations which concealed the AT&T March and April 2011 rejections, etc. AT&T has concealed the AT&T motive on these massive disregard FCC rules, regulations and laws (and Mr. Chelmowski's rights) by providing the FCC false statements 1.17, concealing correspondence, case files, emails during 2011, etc. AT&T actions in 2014 AAA mandatory arbitration process appear to be perjury in the AAA arbitration⁴³, concealment of discovery and Neustar subpoena responses of relative facts⁴⁴, spoilage of evidence⁴⁵, alleged

³⁵ *American International Development, Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816 0.39 (1981), *aff'd sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983).

³⁶ *Contemporary Media*, 214 F.3d at 196.

³⁷ Answer 1.724 and 12/16/14 letter

³⁸ *American International Development, Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816 n. 39 (1981), *aff'd sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983) (Commission stated that "the absence of direct evidence of motive is not significant where the record otherwise clearly establishes that deceptive conduct has occurred.").

³⁹ Neustar Subpoena response - Exhibit B-0001; January 26, 2015 Reply Exhibits Ex-0182 to 187

⁴⁰ Exhibit E-0003 to 5; Exhibit G-0026 to 29 - FCC Order DA 11-775 : Released: April 29, 2011 by Nancy Stevenson, Deputy Chief, FCC Consumer Policy Division stated in ¶ 4 failure to provide "proof of delivery is presumed to be a clear and convincing evidence of a violation (47 CFR 1.717)

⁴¹ *id.*

⁴² 47 CFR § 1.724 (f) (2) (ii) requires identification of all authors ; Exhibit B-0012

⁴³ Exhibit A

⁴⁴ Exhibit B

⁴⁵ Exhibit C

obstructing witnesses⁴⁶, false defamation of character like attacks on Mr. Chelmowski character⁴⁷, concealing details of the direct involvement of AT&T executives with these FCC violations⁴⁸,etc.

10. The only reason this formal case exist is because AT&T 2011 (6) porting rejections of a complete and accurate porting request and AT&T concealment of these porting in the April 2011 informal complaint by AT&T violations of 47 CFR § 52.35 (6 times), 52.36 (6 times), 1.717 and 1.17 (fraudulent concealment)⁴⁹. AT&T abused the trust the FCC gives FCC license in 47 CFR § 1.17 to damage Mr. Chelmowski and violations of his rights to his vanity phone number under the FCC "ACT". Then AT&T also refused to provide Mr. Chelmowski with the required copy of the NOIC. AT&T had the ability to port the vanity number after the 4/11/11 NOIC to FCC however decided to continuing rejecting a complete and accurate porting request through on or about 4/25/11.
11. AT&T continuing disregard to 47 CFR § 1.17 deceptive and misleading statements to the FCC on January 16, 2015 Answer conceal AT&T March and April violations of 47 CFR § 52.35 & 53.36 plus April 11, 2011 and September 22, 2011 violations of 47 CFR § 1.717 and 1.17. A complete disregard of FCC formal complaint process by refusing to providing required factual proof of AT&T alleged statements. Answer statement including without any factual support:

Referencing to March and April 2011:

Paragraph 8. In March and April of 2011, AT&T received multiple porting requests from Choice One, on behalf of its wholesale customer, Ooma, and Ooma's retail customer, James Chelmowski, to port 4 telephone numbers (including the 0400 number) from AT&T Mobility to Choice One. While the other three numbers were ported successfully, the 0400 number was not ported, first due to an incorrect account number on the Choice One LSR, then, after that was

⁴⁶ Exhibit A-0052 to 55

⁴⁷ Mr. Chelmowski January 26, 2015 Affidavit 1

⁴⁸ Exhibit F

⁴⁹ Exhibit B-0001, B-0003, B-0004, B-0008

corrected, because of the pending LSR submitted by XO Communications the year before, which had never been modified or cancelled by XO.

Reference to the April 11, 2011 NOIC to FCC Informal complaint 11-C00292341⁵⁰.

Paragraph 10. On March 23, Mr. Chelmowski filed an informal complaint with the FCC regarding the failed port of the 0400 number.¹¹ AT&T responded to the FCC, on April 11, 2011, with a copy to Mr. Chelmowski, essentially stating that it attempted to contact Mr. Chelmowski to discuss or resolve the complaint, but was unable to reach him.

Reference to the September 22, 2011 NOIC to FCC Informal complaint 11-C00325771.⁵¹

Paragraph 14. On August 31, 2011, AT&T received from the FCC an informal complaint filed by Mr. Chelmowski to which it responded, on September 22, 2011, with a copy to Mr. Chelmowski.¹⁷ In its response, AT&T explained that the 2011 port did not go through due to the open port request made by XO Communications a year earlier.

12. April 11, 2011 FCC 11-C00292341⁵² NOIC response 47 CFR § 1.17 (a) concealing AT&T March and April 2011 porting rejections⁵³.

Response to Notice of Informal Complaint (NOIC)

Date: 4/11/11

Federal Communications Commission

Consumer & Governmental Affairs Bureau Complainant's Name: James Chelmowski

Consumer Inquiries and Complaints Division File No.: 11-C00292341

445 12th Street

Response Type: Other

Washington, D.C. 20554

Service Date: 4/13/11

INVESTIGATION SUMMARY:

AT&T received a Federal Communications Commission (FCC) inquiry from James Chelmowski regarding the inability to port service. Margaret Trammell, AT&T Customer Advocacy, called Mr. Chelmowski left message acknowledging complaint and provided her contact information in the event of questions during the investigation.

AT&T made several attempts to reach Mr. Chelmowski to discuss the FCC inquiry, no response has been received. AT&T will close complaint and this time but will re-open if Mr. Chelmowski responds at a later date.

Sincerely,
Margaret Trammell
Manager - FCC Appeals Bureau
CC: James Chelmowski

13. September 22, 2011 FCC 11-C00325771⁵⁴ NOIC response 47 CFR § 1.17 (a) with No references to A&T March and April 2011 porting rejections⁵⁵ to date AT&T refuses to

⁵⁰ AT&T January 16, 2015 Answer; Exhibit B-0001, Exhibit B-0008

⁵¹ AT&T January 16, 2015 Answer; Exhibit B-0001, Exhibit B-0012

⁵² Exhibit B-0008

⁵³ "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454.462 (D.C. Cir. 1980).

provide the author of this NOIC letter. AT&T's logs indicate the author is a Director of AT&T⁵⁶.

Response to Notice of Informal Complaint (NOIC)

Date: September 22, 2011

Federal Communications Commission

Consumer & Governmental Affairs Bureau

Consumer Inquiries and Complaints Division

445 12th Street

Washington, D.C. 20554

Complainant's Name: James Chelmowski

Agency File Number: 11-C00325771-1

Response Type: Other

Service Date: August 31, 2011

Company File Number: CM20110831_26702265

AT&T Mobility ("AT&T") is in receipt of the above-referenced customer's complaint and appreciates the opportunity to respond. Specifically, James Chelmowski claims that AT&T is blocking the porting of his wireless number ending in 0400. Mr. Chelmowski also alleges that AT&T destroyed him, harassed him and his family and put him in the hospital. AT&T denies all of these allegations.

Please be advised that AT&T has made numerous attempts previously to speak with and assist Mr. Chelmowski with regards to his complaint. To date, Mr. Chelmowski has not returned any of our calls.

AT&T conducted a thorough review of Mr. Chelmowski's account. AT&T determined that, on January 18, 2010, Mr. Chelmowski attempted to port his wireless number ending in 0400 to XO Communications. The port request was denied because the account number provided in the request was incorrect. For security reasons and in accordance with FCC rules, when a customer ports their number to another wireless provider, information necessary to validate the current account must be submitted by the new provider. If this information is not correct, the port request is denied. AT&T attempted on a number of occasions to inform Mr. Chelmowski of the status of the port and to instruct him on the appropriate path forward.

Mr. Chelmowski's account was ultimately deactivated due to non-payment. Mr. Chelmowski had a past due balance on his account. Pursuant to normal collection procedures, his account was cancelled on May 15, 2011. AT&T believes the past due balance of \$345.88 reflects valid and appropriate charges for services rendered to Mr. Chelmowski. AT&T attempted to work with Mr. Chelmowski in regard to the charges and believes he understood the amount that was past due. The account was sent to an outside collection agency on June 18, 2011. Because Mr. Chelmowski's account is currently inactive and service is no longer being provided to that number, the number is not eligible to be ported. AT&T is more than happy to work with the Commission and Mr. Chelmowski to re-activate his account so that he may port his 0400 number to another provider.

With regards to Mr. Chelmowski's allegations regarding treatment he received by AT&T, we deny these claims and note that they are not within the subject matter jurisdiction of the Commission. If Mr. Chelmowski would like to discuss his complaint further or discuss re-activating his account for purposes of porting to another provider, he may contact Nate Camper at 1-501-862-2002. In the alternative, we are happy to work with the Commission to assist Mr. Chelmowski in his efforts to port the 0400 number to another carrier. We trust this letter addresses your concerns regarding this complaint.

Sincerely,

AT&T Office of the President

CC: James Chelmowski

⁵⁴ Exhibit B-0012; Exhibit B-0001; Exhibit B-0003; Exhibit B-0004

⁵⁵ "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454.462 (D.C. Cir. 1980).

⁵⁶ Exhibit B-0012 entry 2 through 5

AT&T disregard to 1.717 Refuses to Proof of Delivery of Required Copy of NOIC to Mr. Chelmowski

14. AT&T answer stated in paragraph 29 "AT&T responded with copies to Mr. Chelmowski" and refusal to provide required proof of delivery.⁵⁷ AT&T provided proof of delivery of the March 17, 2011 termination letter to AAA arbitration⁵⁸ and August 14, 2014 NOIC proof of delivery.⁵⁹ Why would AT&T not provide proof of delivery of the 4/11/11 and 9/22/11 NOIC letters? FCC Order DA 11-775 : Released: April 29, 2011 by Nancy Stevenson, Deputy Chief, FCC Consumer Policy Division stated in paragraph #4 failure to provide "proof of delivery is presumed to be a clear and convincing evidence of a violation [47 CFR § 1.717]. Ms. Stevenson ruled and ordered the FCC statute of limitations clock only begins on the date of her ruling not the events or violations of [47 CFR § 1.717]. FCC rules, order and rulings require proof of delivery of these documents to Mr. Chelmowski, without proof of delivery it would be clear and convincing evidence of violations to [47 CFR § 1.717] and the fraudulent concealment of AT&T responses to the FCC.⁶⁰

A T&T January 16, 2015 - Alleged Footnote "Motion" for AT&T not to be required to abide the FCC rules including the 47 C.F.R § 1.724(f) & (g)

15. AT&T Answer on January 16, 2015 current attempt to continue the fraud, deceit and concealment⁶¹ of the facts of the basis of this claim.⁶²

⁵⁷ Exhibit G-0026 to 29 - FCC Order DA 11-775 : Released: April 29, 2011 by Nancy Stevenson, Deputy Chief, FCC Consumer Policy Division stated in paragraph #4 failure to provide "proof of delivery is presumed to be a clear and convincing evidence of a violation (47 CFR 1.717)

⁵⁸ Exhibit E-0004 to 5

⁵⁹ Exhibit E-0003

⁶⁰ Exhibit G-0026 to 29- FCC Order DA 11-775 : Released: April 29, 2011 by Nancy Stevenson, Deputy Chief, FCC Consumer Policy Division stated in paragraph #4 failure to provide "proof of delivery is presumed to be a clear and convincing evidence of a violation (47 CFR 1.717)

⁶¹ 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).

16. Below is the Footnote "Motion" hidden on page 13 footnote 41 on January 16, 2015 FCC

Answer:

Footnote 41 - To the extent necessary, AT&T hereby requests a waiver from the requirements of Rule 1.724(f), pursuant to Rules 1.724(j) and 1.3. Given the propensity of Mr. Chelmowski to verbally abuse AT&T's employees, barrage its executives with emails, and impose the costs of serial litigation over the loss of a phone number that was seldom if ever used, AT&T submits that there is good cause to waive the requirement to identify additional persons and documents in this instance, particularly where, as here, both parties already have had a full opportunity to take discovery regarding the claims alleged. AT&T does not object to waiving this requirement in connection with Mr. Chelmowski's reply.

17. This footnote "Motion" by AT&T does not conform to the 47 C.F.R. § 1.727 Motions⁶³ and

Federal Rules of Procedures Rule 10 Forms of Pleadings⁶⁴ by AT&T attorney Michael

Goggin practicing law since 1991 according to avvo.com.

18. This footnote "Motion" for ruling for an FCC rule change to 47 C.F.R. § 1.724(f) was

produced 31 days from the December 16, 2014 letter from the FCC stating the procedures in this case. AT&T had 31 days to file a proper Motion for rule changes before the due date of the required § 1.724 Answer that included documentation per rules § 1.724(f).

⁶² See, e.g. Valenti v. AT&T, 12 FCC Rcd 2611, 2621-22 (1997) at ¶ 24 (Without proof of "fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s]," there can be no tolling of the statute of limitations.)

⁶³ 47 C.F.R. §§ 1.727 Motions.

(a) A request to the Commission for an order shall be by written motion, stating with particularity the grounds and authority therefor, and setting forth the relief or order sought.

(b) All dispositive motions shall contain proposed findings of fact and conclusions of law, with supporting legal analysis, relevant to the contents of the pleading. Motions to compel discovery must contain a certification by the moving party that a good faith attempt to resolve the dispute was made prior to filing the motion. All facts relied upon in motions must be supported by documentation or affidavits pursuant to the requirements of Sec. 1.720(c), except for those facts of which official notice may be taken. {1.720 (c) Facts must be supported by relevant documentation or affidavit.}

⁶⁴ Federal Rules of Procedure Title III Rule 10 Forms of Pleadings

(a) Caption; Names of Parties. Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

19. This AT&T alleged footnote "Motion" failed to provide the 47 C.F.R. § 1.727(a), 1727(b) which includes 47 C.F.R. § 1.720 (c) Facts must be supported by relevant documentation or affidavit requirements for a motion in a FCC complaint procedure.
20. This AT&T alleged footnote "Motion" was produced 31 days after the FCC produced rules for this case which required " The answer and reply still must include comprehensive factual support and a thorough legal analysis"⁶⁵. AT&T had ample time to follow the FCC rules and Federal Rules of Procedures to file a proper and legal "Motion for FCC Rules Changes"⁶⁶ before the Answer due date January 16, 2015.
21. If AT&T could find any legal basis under 47 C.F.R. § 1.727⁶⁷ this footnote "Motion" to be legally acceptable, then it must contain findings of fact and conclusions of law, with supporting legal analysis, relevant to the contents of the pleading.
22. Alleged fact #1 in AT&T footnote "Motion", "Mr. Chelmowski to verbally abuse AT&T's employees". No documentation exist in AT&T answer for this alleged outrageous claim⁶⁸. AT&T controlled all documentation including phone logs, correspondence, emails, etc and could not prove this in the AAA arbitration, in fact AT&T agreed with the arbitrator decision these AT&T allegations were false.⁶⁹ AT&T knows these statement is false because in the US court where AT&T is attempting to confirm AAA arbitration ruling that AT&T has no proof of this statement is true, however still continues this character assassination. Even if

⁶⁵ December 16, 2014 FCC letter to AT&T with stating procedure matters " The answer and reply still must include comprehensive factual support and a thorough legal analysis"; 47 C.F.R. §§ 1.720-1.737

⁶⁶ id.

⁶⁷ id.

⁶⁸ Affidavit from James Chelmowski dated January 26, 2015

⁶⁹ 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).

this false allegation was true, no legal basis for a customer to lose his rights under the FCC rules, regulations and laws⁷⁰ for a customer being abusive to an employee.

23. Alleged fact #2 in AT&T footnote "Motion", " barrage its executives with emails. No documentation exist in AT&T answer for this alleged outrageous claim⁷¹. As in #1 AT&T controlled all documentation including phone logs, correspondence, emails, etc and could not prove this in the AAA arbitration, in fact AT&T agreed with the arbitrator's decision that these AT&T allegations were false.⁷² AT&T knows these statements are false because in the US court system AT&T is attempting to confirm AAA arbitration ruling that AT&T has no proof of this statement is true, however still continues this character assassination. Even if this false allegation was true, no legal basis for a customer to lose his rights under the FCC rules, regulations and laws⁷³ for emailing an employee of a company.
24. Alleged fact #3 in AT&T footnote "Motion", " impose the costs of serial litigation over the loss of a phone number that was seldom if ever used". No documentation exist in AT&T answer for this alleged outrageous claim⁷⁴. No legal basis for a customer to lose his rights under the FCC for a customer exercising his required due diligence under fraudulent concealment doctrine on attempt to find AT&T continue the fraud, deceit and concealment of the facts of the basis of this claim⁷⁵ and the FCC do not specified required minimum usage of

⁷⁰ 47 C.F.R. §§ 1.720-1.737; December 16, 2014 FCC letter to AT&T with stating procedure matters " The answer and reply still must include comprehensive factual support and a thorough legal analysis"

⁷¹ Affidavit from James Chelmowski dated January 26, 2015

⁷² 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454.462 (D.C. Cir. 1980).

⁷³ 47 C.F.R. §§ 1.720-1.737; 47 C.F.R. §§ 1.717; 47 C.F.R. §§ 52.35; 47 C.F.R. §§ 52.36, etc.

⁷⁴ Affidavit from James Chelmowski dated January 26, 2015

⁷⁵ See, e.g. *Valenti v. AT&T*, 12 FCC Rcd 2611, 2621-22 (1997) at ¶ 24 (Without proof of "fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s]," there can be no tolling of the statute of limitations.)

phone number or in this case a "Vanity" phone number for rights under the FCC⁷⁶. AT&T absolutely no concern for a 17 year customer right to possess his vanity number and his cost to try to possess his vanity number which he provided AT&T a complete and accurate porting request in March of 2011. AT&T only concern is not to produce the required documents⁷⁷ of the March and April 2011 AT&T porting rejections no matter what the unbelievable costs are to a former 17 year customer of AT&T for his US Constitutional & FCC rights. Not once since then did AT&T offer to give him his vanity number or make him whole⁷⁸. Even if this false allegation was true, no legal basis for a customer to lose his rights under the FCC rules, regulations and laws⁷⁹ for due diligence for the fraudulent concealment doctrine on an attempt to find AT&T continue the fraud, deceit and concealment of the facts of the basis of this claim⁸⁰.

25. Alleged fact #4 in AT&T footnote "Motion", "where, as here, both parties already have had a full opportunity to take discovery regarding the claims alleged ". No documentation exist in AT&T answer for this alleged outrageous claim⁸¹. AT&T was required to produce all these items asked in this Motion per order of the AAA arbitrator on December 4, 2013. On January 15, 2014, AT&T concealed all these items as AT&T attorney client privilege documents again in another fraud, deceit and concealment of the facts of the basis of this claim⁸². Another AT&T fraud, deceit and concealment of the facts of the basis of this

⁷⁶ 47 C.F.R. §§ 52.35; 47 C.F.R. §§ 52.36

⁷⁷ 47 C.F.R. §§ 1.720-1.737; 47 C.F.R. §§ 1.717; 47 C.F.R. §§ 52.35; 47 C.F.R. §§ 52.36, etc.

⁷⁸ Exhibit E

⁷⁹ 47 C.F.R. §§ 1.720-1.737; 47 C.F.R. §§ 1.717; 47 C.F.R. §§ 52.35; 47 C.F.R. §§ 52.36, etc.

⁸⁰ See, e.g. Valenti v. AT&T, 12 FCC Rcd 2611. 2621-22 (1997) at ¶ 24 (Without proof of "fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s]," there can be no tolling of the statute of limitations.)

⁸¹ Affidavit from James Chelmowski dated January 26, 2015

⁸² See, e.g. Valenti v. AT&T, 12 FCC Rcd 2611. 2621-22 (1997) at ¶ 24 (Without proof of "fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s]," there can be no tolling of the statute of limitations.)

claim⁸³ ⁸⁴ on March 5, 2014 AT&T refused to authorize FCC appointed neutral third party administrator of the NPAC⁸⁵ and phone number porting Neustar⁸⁶ to release any documents on the 2011 AT&T porting rejections or the 2010 alleged open porting order by XO facts AT&T claims in this case.

26. AT&T is attempting to further conceal these documents in this footnote "Motion" as AT&T did in 2014 by forbidding Neustar of providing any details of the March and April 2011 AT&T porting rejections and 2010 cancelation for 847-768-0000 and 847-768-0400 Neustar⁸⁷ in wrote :

Neustar is in receipt of the above-referenced subpoena concerning the porting activity of several telephone numbers. As the administrator of the regional United States Number Portability Administration Centers (NPACs), Neustar confirmed that it is in possession of carrier data responsive to the subpoena. As the administrator of the NPACs, Neustar is required to maintain the confidentiality of carrier data contained in the NPACs, such that it may not disclose such data to a third party without first obtaining the carrier's written consent to do so. Neustar has received authority from AT&T to disclose the following data about the telephone number there indicated:

- 847-768-0400 - July 18, 2011 -ported from Cingular Wireless (AT&T) to the code-assignee Ameritech(AT&T)

27. AT&T using a false and fraudulent veil of AT&T attorney client privilege failed to produce any porting documents, AT&T FCC NOIC informal complaint case files and easy producible emails with AT&T SEG⁸⁸ on January 15, 2014 AAA arbitration discovery.

28. AT&T January 16, 2015 answers statements refer to these discovery documents however AT&T failed to produce these discovery items required 47 C.F.R. § 1.724 because it would

⁸³ *id.*

⁸⁴ 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454.462 (D.C. Cir. 1980).

⁸⁵ Exhibit B-0002

⁸⁶ The FCC determined that the NPAC should be administered by one or more neutral third parties. Neustar has been deemed a neutral third-party administrator with strict neutrality requirements in place for all employees, board members and contractors. Neustar's corporate-wide neutrality program is unmatched by any other entity in the market today. <https://www.npac.com/number-portability/the-npac-neustar-lnp>

⁸⁷ *id.*

⁸⁸ Exhibit C-0002 to 5

expose AT&T fraudulent concealment scheme.⁸⁹ Instead created an illusion of deception of alleged "full cooperation of AAA arbitration discovery"⁹⁰ along with false personal character assassination on Mr. Chelmowski and this strange footnote "Motion" to conceal the facts of the real reasons for AT&T 2011 March and April porting rejections of a complete and accurate porting request. For the record, during these March and April porting requests Mr. Chelmowski's account was current with no past due balance which is not required 47 C.F.R. § 42.35 and 42.36 only an active phone number. AT&T repeatedly tries to assassinating Mr. Chelmowski character on paying his bills on time⁹¹ to deflect and deceive others to avoid producing the facts on AT&T 2011 March and April porting rejections⁹² and AT&T consistent fraud, deceit and concealment of the facts of the basis of this claim.⁹³ This practice is exhibited in AT&T January 16, 2015 Answer and AT&T footnote "Motion". AT&T constant false character assassination, blaming everyone else for AT&T actions. AT&T total disregard of FCC rules and state AT&T needs not provide a single document of evidence to support anything.

**AT&T possession of documents Required should have been provided on January 16, 2015
FCC Answer 47 CFR § 1.724(f) & (g), Truthful and Accurate Statements to the
Commission 47 CFR § 1.17 and FCC December 16, 2014 ruling in this case.**

29. Produce requirements under 47 C.F.R. § 1.724 including but not limited to the following

1.724 (f) & (g) and the following:

⁸⁹ 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454.462 (D.C. Cir. 1980).

⁹⁰ *id.*

⁹¹ Exhibit A-0011 Bill current due April 5, 2011; Exhibit B-0012; Exhibit B-0018-20; AT&T Answer

⁹² 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454.462 (D.C. Cir. 1980).

⁹³ See, e.g. *Valenti v. AT&T*, 12 FCC Rcd 2611, 2621-22 (1997) at ¶ 24 (Without proof of "fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s]," there can be no tolling of the statute of limitations.)

1) LNP Porting documents with 76 references in AT&T answer statements⁹⁴ (required for FCC violations 6 counts 47 C.F.R. § 42.35, 6 counts 47 C.F.R. §42.36 and the fraudulent concealment):

Produce any and all documents internal and external, emails, working papers, logs, submitted to others, filings for the porting of 847-768-0000 started on or about 12/10/2009 and 847-768-0400 started on or about 12/10/2009 plus 2011 porting started on or about 3/18/2011 porting of all 4 numbers 847- 768-0400, 847-768-0000, 847-744-5626 and 847-917-2384 through 12/31/11. This should include all communication to and from other companies or carriers, including but not limited to FCC, Neustar, North American Numbering Council (NANC), Number Portability Administration Center Service Management System (NPAC), other government agencies and other companies regarding porting of all these numbers. Names of AT&T employees with firsthand knowledge per 47 C.F.R. § 1.724(f) & (g).

2) FCC formal Complaint 11-C00292341 - Response author Margaret Trammel - No AT&T case file with 52 references in AT&T answer statements⁹⁵ (required for FCC violations 47 C.F.R. § 1.717 and the fraudulent concealment):

Produce any and all documents from AT&T internal investigation regarding the inability to port service for Claimant, the FCC Informal Complaint 11-C00292341 from March 24, 2011 date filing of the FCC informal complaint to the present include all documents, work papers, internal and external correspondence, emails, and proof delivery of the required copy to James Chelmowski. Including the AT&T internal case number and AT&T full internal case file. Names of AT&T employees with firsthand knowledge per 47 C.F.R. § 1.724(f) & (g).

3) FCC formal Complaint 11-C00325771 - No Response author - AT&T case CM20110831_26702265 with 55 references in AT&T answer statements⁹⁶ (required for FCC violations 47 C.F.R. § 1.717 and the fraudulent concealment):

Produce any and all documents from AT&T internal investigation regarding the inability to port service for Claimant, the FCC Informal Complaint 11-C00292341 from date filing of the FCC informal complaint to the present include all documents, work papers, internal and external correspondence, emails, and proof delivery of the required copy to James Chelmowski. Including provide the AT&T author of this letter and AT&T employees with firsthand knowledge per 47 C.F.R. § 1.724(f) & (g).

4) Correspondence and emails with 62 references in AT&T answer statements⁹⁷ - (required for all FCC 14 violations and the fraudulent concealment)

Produce any and all documents internal and external and all emails with regards to Jim Chelmowski or James Chelmowski (Claimant) or any of his phone numbers from

⁹⁴ *id.*

⁹⁵ *id.*

⁹⁶ *id.*

⁹⁷ *id.*

12/01/2009 to the present. AT&T SEG takes only seconds or minutes for production of all these documents⁹⁸. Include all certification from AT&T SEG, amdocs, intelligence, etc. of completeness, etc.

30. These documents should have been produced to support AT&T January 16, 2015 FCC answer statements and should be required under the FCC Answer 1.724 rules however again AT&T decided to conceal these documents . Exhibit group D illustrate which statements in AT&T 1/16/15 Answer refer to each of these 4 items to compel that should have been produced in that Answer.
31. AT&T January 16, 2015 Answer continue concealment and deceit⁹⁹, implied these documents were already produced, however, Chelmowski's January 26, 2015 reply disclosed AT&T discovery production from the AAA arbitration in Reply Exhibit Ex-0278 to Ex-0519 and the AAA arbitrator approved items subject to only AT&T attorney client privilege¹⁰⁰. AT&T stripped out all porting documents, carefully white out and redacted conversation logs so AT&T could try to manipulate evidence for defamation and false character assassination of Mr. Chelmowski to take the focus of AT&T breach of contract, conversion, intentional infliction of emotional distress, etc.¹⁰¹. AT&T knew much of the documents AT&T controlled and without court mandated Federal Rules of Procedures in discovery AT&T could manipulate document production and conceal AT&T true motive. AT&T control of

⁹⁸ Exhibit C-0002 to 5

⁹⁹ 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).

¹⁰⁰ *id.*

¹⁰¹ Spoilage of evidence including almost surgically redacting AT&T logs Exhibit Group C, stripping emails so AT&T could testify with no regards to the truth in Exhibit Group A potential perjury; Exhibit Group B AT&T documents full contradictions because they are full of concealment and lies; Exhibit Group D - AT&T executive involvement 99% of the emails were concealed on select few including emails where the whole body was erased to change the appearance of the email. AT&T executives in 2011 were busy trying to get the FCC approval on the \$39 Billion T-Mobile merger and probably did not want the FCC to be aware of these FCC violations at the expense of Mr. Chelmowski. AT&T executive opening emails from February and March of 2011 were opened days before the second informal complaint was filed (not by Mr. Chelmowski), during AT&T informal investigations and during some key dates in the merger process. Why would AT&T open emails months and years later? The only way to get the facts is requiring AT&T to follow FCC 1.724 and 1.17 and produce these concealed documents.

incriminating document, witness and suppression of Neustar porting data subpoena made the AT&T mandated arbitration process nearly impossible for AT&T lose no matter what AT&T did to their customers.

32. AT&T actions illustrate the total disregard of their customers rights, that AT&T would even provide false, deceptive and concealed responses to the FCC¹⁰². AT&T knows perjury¹⁰³ in an arbitration is nearly impossible to prosecute. AT&T references AT&T "full discovery" in AT&T January 16, 2015 for some reason very selective produced documents in the January 16, 2015 answer and failed to produce these documents clearly referenced in this Answer¹⁰⁴. Maybe AT&T is still trying to deceive the FCC that AT&T already produced documents to support the 2011 porting rejections, informal complaint responses, etc. mentioned in AT&T Answer and all the Complaint initial interrogatories.¹⁰⁵
33. Why would AT&T not agree to reschedule a United States Federal District Court hearing (Vacate or Confirm the Arbitration Award) a few weeks later when Mr. Chelmowski would have doctor's clearance instead trying to force Mr. Chelmowski to disobey his doctor's orders¹⁰⁶ and risk further injury to his recent surgically repaired leg? AT&T refusing the decency of re-scheduling this hearing¹⁰⁷ without allowing Mr. Chelmowski appear at the hearing defend his right to amend his complaint as matter of course Federal Rules of Civil Procedure 15 (a) (1) (B). Now this case is the US Circuit Court of Appeals. It appears AT&T without allowing Mr. Chelmowski's right to testify at the hearing wanted this case

¹⁰² Concealment of required factual support 47 CFR § 1.724 Answer; 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission

¹⁰³ Perjury Exhibit Group A

¹⁰⁴ Concealment of required factual support 47 CFR § 1.724 Answer - Exhibit Group D

¹⁰⁵ 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).

¹⁰⁶ Doctor's post operation order of being homebound Exhibit E-0006

¹⁰⁷ AT&T refusal to re-schedule hearing because Mr. Chelmowski Dr. Order Exhibit E-0007 to 8

decided to help with AT&T fraudulent concealment scheme¹⁰⁸ avoid providing required factual support in an effort to conceal the FCC violations.¹⁰⁹ The case has no bearing on the FCC jurisdiction of this FCC formal case.

34. AT&T disregard of customer's rights included AT&T attempts to conceal these documentation to support AT&T answer

35. Starting list of AT&T employees with firsthand knowledge using AT&T produced logs and emails opened by AT&T employees are in Exhibit F and summarized on Exhibit F-0001.

Summary

36. AT&T presented no legal argument for an exception to 47 C.F.R. § 1.727 Motion for AT&T footnote "Motion" not to conform to FCC rules and FRCP for a legal and valid motion.

37. Even if AT&T footnote "Motion" would be considered a legal motion by the FCC it failed to produce the requirements of factual and legal support requirement.

38. AT&T provided no legal argument that false accusations of customer's behavior or emails to AT&T employees would allow the 47 C.F.R. § 1.724 Answer requirements.¹¹⁰

39. AT&T outrageous allegation that neutral third party Neuter, OOMA and XO sworn statements are false and fraud without producing a single document.¹¹¹ FCC should require AT&T follow the FCC rules and not make false allegations without the required factual proof.¹¹²

¹⁰⁸ 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission

¹⁰⁹ *id.*

¹¹⁰ December 16, 2014 FCC letter to AT&T with stating procedure matters " The answer and reply still must include comprehensive factual support and a thorough legal analysis"; 47 C.F.R. §§ 1.720-1.737

¹¹¹ AT&T January 16, 2015 Answer

¹¹² *id.*

40. AT&T April 11, 2011 NOIC communications with the FCC concealed all AT&T March and April 2011 porting rejections with fraud, deceit and concealment of the facts¹¹³ of the basis of this claim¹¹⁴. The completely deceptive letter blamed Mr. Chelmowski for not calling back AT&T for the failure to port AT&T. 47 C.F.R. § 52.35 and § 52.36 requires a telecom company may not reject complete and accurate porting request does not require a customer calling back the telecom company in the regulations.¹¹⁵ The AT&T investigation for this 4/11/11 NOIC lasted only hours because AT&T just received the complaint on 4/11/11 per the FCC. AT&T never sent this letter to Mr. Chelmowski as required by 47 C.F.R. § 1.717.
41. AT&T September 22, 2011 NOIC communications with the FCC concealed all AT&T March and April 2011 porting rejections with fraud, deceit and concealment of the facts are the basis of this claim¹¹⁶. The deceptive letter blamed Mr. Chelmowski for: 1) Deceptive (not relative) statement not calling back AT&T for the failure to port- 47 C.F.R. § 52.35 and § 52.36 requires a telecom company may not reject complete and accurate porting request does not require a customer calling back the telecom company 2) Deceptive (not relative) statement 2010 wrong account number unrelated porting request AT&T had a valid reason to reject and 3) Deceptive (not relative) statement Mr. Chelmowski account was inactive in September 2011 therefore in September of 2011 AT&T had a valid reason to reject the porting however during the March and April of 2011 Mr. Chelmowski's account was active. This fact and the facts of the 2011 AT&T porting rejections were concealed with fraud,

¹¹³ 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission

¹¹⁴ See, e.g. *Valenti v. AT&T*, 12 FCC Rcd 2611, 2621-22 (1997) at ¶ 24 (Without proof of “fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s],” there can be no tolling of the statute of limitations.)

¹¹⁵ 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; “[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent.” *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).

¹¹⁶ See, e.g. *Valenti v. AT&T*, 12 FCC Rcd 2611, 2621-22 (1997) at ¶ 24 (Without proof of “fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s],” there can be no tolling of the statute of limitations.)

deceit and concealment of the facts of the basis of this claim¹¹⁷. AT&T logs show that AT&T directors were involved with this investigation that lasted 23 days vs. 4/11/11 investigation which lasted only hours. AT&T 9/22/11 NOIC contained over 30 log entries and the 4/11/11 investigation contained NO log entries. AT&T never sent this letter to Mr. Chelmowski as required by 47 C.F.R. § 1.717.

42. Mr. Chelmowski never filed this complaint¹¹⁸ in August of 2011 however carefully reading the 4/11/11, AT&T promised the FCC after closing AT&T investigation in minutes or hours while AT&T is act of multiple porting rejections (completely concealed in the NOIC letter). AT&T stated AT&T would reopen their FCC investigation once Mr. Chelmowski called back AT&T. Per AT&T records Mr. Chelmowski called back AT&T on April 11, April 18 and April 21 of 2011¹¹⁹. It appears AT&T decided to re-open the FCC in August of 2011 per AT&T 4/11/11 NOIC letter by forgery of Chelmowski identity to create a new informal complaint. AT&T tried to hide the existence of the 4/11/11 NOIC complaint this complaint has no AT&T internal case number or any AT&T logs. The 4/11/11 NOIC complaint did not disclose the ongoing 2011 March and April AT&T porting rejections which was the only item in the complaint. The response was to blame Mr. Chelmowski even though he had a complete and accurate porting request on an active phone line to conceal all facts from the FCC so FCC would not further investigate. AT&T concealed this letter from Mr. Chelmowski to prevent him from becoming aware of the facts which are the basis of his FCC claims¹²⁰.

¹¹⁷ *id.*

¹¹⁸ Affidavit from James Chelmowski dated January 26, 2015

¹¹⁹ Chelmowski's Complaint and Reply

¹²⁰ See, e.g. *Valenti v. AT&T*, 12 FCC Rcd 2611, 2621-22 (1997) at ¶ 24 (Without proof of “fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s],” there can be no tolling of the statute of limitations.)

43. AT&T practice of concealing the facts to prevent him from becoming aware of the facts which are the basis of his FCC claims¹²¹ continued in 2013 and 2014. Until after Neustar exposed and disclosed on March 5, 2014 that these 2011 March and April porting rejections exist and AT&T refuses to authorize Neustar to disclose any details on these 2011 March and April AT&T porting rejections.¹²²
44. AT&T answer could not even address the individual porting rejections dates as required under FCC Answer. All relevant AT&T Answer statements were proven false through AT&T documents and neutral third party sworn subpoena response in January 26, 2015 Reply requirements in paragraphs 56 through 86 with factual proof. AT&T answer did not provide a single document to support AT&T answers statements which was required.¹²³
45. AT&T should not be allowed to make a mockery of the FCC complaint process for 1.717 informal complaints and 1.720 formal complaints by massive false character assassination and false statements and refusing to provide the required documentation for AT&T alleged facts.¹²⁴ United States citizens like Mr. Chelmowski are under the impression that FCC affiliates and licensee such as AT&T are required by law to adhere to the FCC laws, rules and regulations.¹²⁵ Citizens like Mr. Chelmowski have a constitutional rights.
46. It appears in AT&T Answer and many other AT&T correspondence that AT&T executives were very angered that Mr. Chelmowski received a refund of the hundreds of dollars overpayment to AT&T from 2007 in 2010.¹²⁶ For Mr. Chelmowski to obtain the refund after trying for over 2 years through AT&T customer support and AT&T Office of the President

¹²¹ *id.*

¹²² 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454.462 (D.C. Cir. 1980).

¹²³ *id.*

¹²⁴ *id.*

¹²⁵ *id.*

¹²⁶ Exhibit F-0046 to 47

required Mr. Chelmowski to email AT&T executives in 2010¹²⁷. AT&T should not be allowed to hold his Vanity Number 847-768-0400 hostage out anger and revenge by violating Mr. Chelmowski rights under the FCC Act and United States Constitution. Then prevent him from becoming aware of the facts which are the basis of his FCC claims¹²⁸ and get away with these illegal action because apparently AT&T believes they are above the law and their customer does not have the financial strength to fight AT&T illegal actions.¹²⁹

47. Apparently, AT&T believes AT&T does not need to follow FCC law¹³⁰ (besides AT&T owns terms and agreement with their customers, arbitration and court rules) and should be able to prevent customer from becoming aware of the facts which are the basis of his FCC claims¹³¹ through AT&T actions which include perjury¹³², spoilage of evidence¹³³, witness tampering¹³⁴, obstruction of third party subpoenas¹³⁵, etc. in AT&T mandated arbitration process. AT&T knows how to abuse an arbitration process because the very little if any involvement by the US court system.¹³⁶ By AT&T concealment of any potential incriminating document, witness and false character assassination of their customer to cover up AT&T illegal intentional actions.

¹²⁷ *id.*

¹²⁸ See, e.g. Valenti v. AT&T, 12 FCC Rcd 2611. 2621-22 (1997) at ¶ 24 (Without proof of “fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s],” there can be no tolling of the statute of limitations.)

¹²⁹ 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; “[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent.” *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).

¹³⁰ 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission; “[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent.” *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454,462 (D.C. Cir. 1980).

¹³¹ See, e.g. Valenti v. AT&T, 12 FCC Rcd 2611. 2621-22 (1997) at ¶ 24 (Without proof of “fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s],” there can be no tolling of the statute of limitations.)

¹³² Exhibit A - all pages

¹³³ Exhibit A-0052 to 55

¹³⁴ Exhibit C all pages

¹³⁵ Exhibit B-0002

¹³⁶ See AT&T filings in the US court system for the now active case currently moved the US Appellate court as of February 17, 2015.

48. This formal complaint case would not be here today before the FCC, if AT&T would have ported his complete and accurate request on March 24, 2011 as required by 47 C.F.R. § 52.35; 47 C.F.R. § 52.36 or AT&T would have been honest with the FCC and 47 C.F.R. § 1.717 on April 11, 2011 provided the FCC the fact that during March and April of 2011 AT&T rejected Mr. Chelmowski's porting accurate and complete request. AT&T should be accountable for their constant false character assassination, blaming everyone else for AT&T actions. Even statements that FCC appointed third party neutral company Neustar letter on March 5, 2014 was completely fraudulent along with XO and OOMA sworn subpoena responses. AT&T needs not provide a single document to support these outrageous allegations which by law and FCC¹³⁷ are required.
49. This formal complaint is relatively simple, Mr. Chelmowski multiple times in March and April of 2011 provided a complete and accurate porting request. AT&T rejected these response and has concealed to date AT&T details for March and April 2011 rejections from the FCC in 2011 informal complaints and refused to provide a single document to support AT&T false statements in this formal complaint. FCC 47 CFR § 52.35 & 52.36 requires AT&T provide Mr. Chelmowski his vanity phone in March and April of 2011, if fact anytime after those dates. Instead AT&T fraudulent conceals all documentation and relentless personal defamation and character assassination of Mr. Chelmowski¹³⁸ and blames everyone else for AT&T 2011 porting rejections in effort to conceal the actual facts. AT&T total disregards of Mr. Chelmowski rights, FCC rules including 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission, AT&T mandatory arbitration process, etc to

¹³⁷ 47 C.F.R. §§ 1.720-1.737; 47 C.F.R. §§ 1.717; 47 C.F.R. §§ 52.35; 47 C.F.R. §§ 52.36, etc.

¹³⁸ Mr Chelmowski January 26, 2015 Affidavit 1

probably cover up the involvement of AT&T executives¹³⁹ in these massive FCC violations.

Which will be uncovered upon requirement of AT&T to follow FCC rules 47 CFR § 1.17 -

Truthful and Accurate Statements to the Commission and 47 C.F.R. § 1.720 to 1.726 formal complaint.

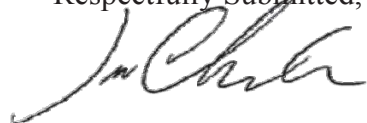
50. Mr. Chelmowski prays that AT&T should be required to follow the FCC rules 47 C.F.R. § 1.720 to 1.726 including but not limited to 47 C.F.R. § 1.724 Answers.

51. Mr. Chelmowski prays that FCC require AT&T to produce items which includes AT&T refers in 1.724 Answer statement which he discloses in the Proposed Order 47 C.F.R. § 1.727(b) Proposed Order required for a 1.727 FCC Motion and included in this motion.

52. Mr. Chelmowski prays that AT&T be required to follow the FCC rules 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission. For the “Federal Communications Commission”, which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter 47 U.S.C. § 151.

53. Point of clarification of the December 14, 2014 FCC ruling, AT&T has never offered to help Mr. Chelmowski get his vanity number or provide any assistance¹⁴⁰. AT&T since March 2011 continue the fraud, deceit and concealment of the facts of the basis of this claim¹⁴¹, therefore Mr. Chelmowski never had a chance to retain his vanity number 847-768-0400 even in March and April 2011 with a complete and accurate porting request on an active phone line.

Respectfully Submitted,



¹³⁹ Exhibit F all pages

¹⁴⁰ Exhibit E all pages

¹⁴¹ See, e.g. Valenti v. AT&T, 12 FCC Rcd 2611. 2621-22 (1997) at ¶ 24 (Without proof of “fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s],” there can be no tolling of the statute of limitations.)

James Chelmowski
6650 N Northwest Hwy #300
Chicago, IL 60631
847-768-0000

March 3, 2015

CERTIFICATE OF SERVICE

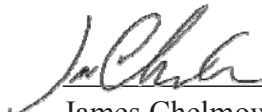
I HEREBY CERTIFY that on this 3rd day of March, 2015, a FCC Formal Motion to Compel FCC Rules Including but Not Limited to 47 CFR § 1.724 Answers and 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission against AT&T Mobility LLC, was electronic sent by email and the FCC's electronic filing system to the Defendant.

Michael Groggin
AT&T
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Washington, DC 20036
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Counsel for AT&T Mobility LLC

March 3, 2015

Date



James Chelmowski
Complainant

Proposed Order for Motion to Compel FCC rules 47 C.F.R. § 1.724 Answer and 47 CFR § 1.17 - Truthful and Accurate Statements to the Commission.

AT&T is required to produce requirements under 47 C.F.R. § 1.724 Answer including but not limited to the following 1.724 (f)¹ & (g)² and the following:

1) Produce any and all documents internal and external, emails, working papers, logs, submitted to others, filings for the porting of 847-768-0000 started on or about 12/10/2009 and 847-768-0400 started on or about 12/10/2009 plus 2011 porting started on or about 3/18/2011 porting of all 4 numbers 847- 768-0400, 847-768-0000, 847-744-5626 and 847-917-2384 through 12/31/11. This should include all communication to and from other companies or carriers, including but not limited to FCC, Neustar, North American Numbering Council (NANC), Number Portability Administration Center Service Management System (NPAC), other government agencies and other companies regarding porting of all these numbers. Names of AT&T employees with firsthand knowledge per 47 C.F.R. § 1.724(f) & (g).

2) Produce any and all documents from AT&T internal investigation regarding the inability to port service for Claimant, the FCC Informal Complaint 11-C00292341 from March 24, 2011 date filing of the FCC informal complaint to the present include all documents, work papers, internal and external correspondence, emails, and proof delivery of the required copy to James Chelmowski. Including the AT&T internal case number and AT&T full internal case file. Names of AT&T employees with firsthand knowledge per 47 C.F.R. § 1.724(f) & (g).

3) Produce any and all documents from AT&T internal investigation regarding the inability to port service for Claimant, the FCC Informal Complaint 11-C00292341 from date filing of the FCC informal complaint to the present include all documents, work papers, internal and external correspondence, emails, and proof delivery of the required copy to James

¹ Sec. 1.724 Answers. (f) The answer shall include an information designation containing:

(1) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the answer, along with a description of the facts within any such individual's knowledge;

(2) A description of all documents, data compilations and tangible things in the defendant's possession, custody, or control, that are relevant to the facts alleged with particularity in the answer. Such description shall include for each document:

(i) The date it was prepared, mailed, transmitted, or otherwise disseminated;

(ii) The author, preparer, or other source;

(iii) The recipient(s) or intended recipient(s);

(iv) Its physical location; and

(v) A description of its relevance to the matters in dispute.

(3) A complete description of the manner in which the defendant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information;

² Sec. 1.724 Answers. (g) The answer shall attach copies of all affidavits, documents, data compilations and tangible things in the defendant's possession, custody, or control, upon which the defendant relies or intends to rely to support the facts alleged and legal arguments made in the answer.

Chelmowski. Including provide the AT&T author of this letter and AT&T employees with firsthand knowledge per 47 C.F.R. § 1.724(f) & (g).

4) Produce any and all documents internal and external and all emails with regards to Jim Chelmowski or James Chelmowski (Claimant) or any of his phone numbers from 12/01/2009 to the present. AT&T SEG takes only seconds or minutes for production of all these documents. Include all certification from AT&T SEG, amdocs, intelligence, etc. of completeness, etc.